

Putting Collective Back Into Bargaining

Negotiating agreements with organized employees has been one of the less pleasant aspects of the local government management profession for me as a city manager. The idea that workers are on one side and management on the other always has seemed inconsistent with creating an organizational environment in which everyone is encouraged to cooperate in achieving the organization's goals.

The traditional practice whereby each side presents its demands and then spends endless hours, often beyond the expiration of the current contract, defending its position is a frustrating waste of time. The demands almost always are extremes that cannot possibly be achieved, and everyone knows it. The bargaining—anything but “collective”—goes on, often acrimoniously, with threats and personal attacks as common tactics until solutions, usually reluctant compromises, can be found. This process does not satisfy anyone because you sometimes have to give up what you previously stated was vital, which is the same as accepting a loss.

Such settlements do not foster workplace relationships that focus energy on the work. Instead, effort is spent on contract compliance issues or grievances, sometimes undermining the realization of organizational goals. Difficult contract negotiations in the public sector also do little to improve public impressions or support for the local government.

Because I have worked in two states, New York and Washington, where the process and procedures for public sector bargaining generally were mandated by the state, I

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Now that local governments in both states have been limited in their ability to develop anything different. In 1991, I moved to Colorado and found few restraints on local government, at least when it came to collective bargaining. Although I did not expect to have to deal with this subject in my new job, the Greeley firefighters decided to petition for the right to bargain shortly after my arrival. So I had a chance to do it differently. This article relates my experience in developing an interest-focused, collective bargaining process that after three years is working well.

Environment

Greeley, which is a home-rule city, began collective bargaining with police officers several years before, authorized by a voter-approved city charter amendment. Although the experience with the police generally was good, the city council was comfortable with the status quo and did not want to approve further employee organization for the purpose of negotiating compensation and working conditions.

The firefighters already were organized and for several years had been considering a petition for recognition. Although there were no big disagreements at the time, the firefighters felt that such decisions as changes to the pension plan had been made by the council without the worker's input. They also considered a contract a safety net, should future councils seek to limit compensation or take away benefits in times of fiscal stress or competing priorities.

Soon after I arrived in Greeley, the firefighters filed a notice of their intent to petition for a vote on amending the city charter to require collective bargaining with their union. Although my experiences with collective bargaining had been less than satisfying, I did not see negotiations as something to be opposed on prin-

ciple. In my judgment, however, the wording of the charter amendment had some serious problems. Consequently, I advised the firefighters that if they went forward with the amendment as drafted, I would send the council a recommendation that it be opposed.

From my study of the community political environment, it was not at all clear that opposition by the council and by me would ensure that the measure would be defeated. The firefighters had a great deal of community good will behind them, and it would be hard for the administration to argue against it because the police experience had caused no problems. Fortunately, all parties wanted to avoid a public controversy and the possible creation of long-term problems whichever way the vote went.

Setting the Stage

At this point, the firefighters were approached with the suggestion that if the proposed charter amendment could be rewritten to address some of my concerns, I would make a recommendation to the council to place the measure on the ballot, thereby eliminating the need to collect signatures on a new petition. The firefighters agreed, and a team was assembled quickly to rework the draft.

The attorney whom I hired was experienced in labor relations and shared my feelings about the traditional way of engaging in collective bargaining. A new proposal was developed that was acceptable to all parties. The council placed the measure on the ballot, and it was approved by the voters. At least, the groundwork had been laid to start a new approach.

Key Elements of the Charter Amendment

Several parts of the amendment laid the foundation for principled negotiation, a practice that is proposed by

Roger Fisher and William Ury (1981) in their book *Getting to Yes: Negotiating Agreement Without Giving In*. The method prescribed by Fisher and Ury has four main elements.

First: *Separate the people from the problem*. This entails understanding each other's perceptions of the situation, recognizing the emotions involved and preparing to deal with them, and communicating effectively. Second: *Focus on interests, not positions*, the latter being solutions that may not be the best that could be accomplished. Focusing on interests requires an understanding of the difference between substantive interests and relationship interests. While the purpose of collective bargaining is to resolve substantive issues related to the workplace, the ongoing relationship is important, and each party should understand its own and each other's relationship interests.

Third: *Invent options for mutual gain*. This undertaking can be challenging until the parties get past the presumption of a "fixed pie size" or the preconception that there are no other solutions out there somewhere. Fourth: *Insist on using objective criteria* to evaluate alternative solutions that can lead to mutually satisfying solutions.

Following are charter provisions that contain these key elements.

Statement of Policy. The policy stated three important principles:

1. Public safety requires no interruption of services, that is, no work-stoppages.
2. A harmonious working relationship is a mutual goal.
3. Public services can be improved by the involvement of employees in decisions that affect them or that they would be required to implement.

This policy clearly established the paramount *shared* interests, as compared with the different or opposing interests of the parties.

Scope of Collective Bargaining. This was established in the charter to identify clearly the basic interests of the parties, to eliminate what could have been an issue in the amendment vote, and to remove a potentially difficult issue from the first contract negotiations. The charter states:

Firefighters shall have the right to bargain collectively with the City respecting compensation, hours, working conditions, grievance procedure, agency fee, and other terms and conditions of employment of firefighters.

While recognizing the legitimate rights of employees to be involved in decisions which affect them, the City nevertheless recognizes that on balance, certain decisions are related more closely to questions regarding the quality or level of service to the public . . . than to conditions of employment. Accordingly, it is recognized that the employee's right to bargain collectively is limited and that the City may, but need not, negotiate over matters concerning: the direction of work of the firefighters; the decision to hire, promote, transfer, assign, or retain firefighters for cause; the decision to lay off firefighters for lack of work or funds, provided that procedures used to implement such decisions and the effects of such decisions are subject to negotiations; the maintenance of governmental efficiency; the methods and means by which firefighters are utilized to perform operations, provided . . . that minimum staffing on a piece of apparatus is negotiable; and the actions required to carry out the missions of the City.

The section on management rights was one of the most difficult to

write, but we ended up with a reasonably clear statement that yet provides flexibility for the future.

Negotiation Process. The charter amendment spelled out the process of negotiation in considerable detail, from the request to initiate negotiations to the final resolution by a vote of the people should an impasse result. Important elements that affect the format or character of the negotiations process include the following:

- Initial proposals are made to identify "specific concerns or interests" on which discussion is desired. In other words, no demands, positions, or offers should be made at this point, following the Fisher/Ury suggestion to focus on interests.
- Next come discussions of concerns or interests, to assure understanding. This step is an opportunity for each party to provide background or to explain why the concern exists. For example, the employer might indicate a desire to discuss medical insurance costs due to rapidly rising claims. While taking this step helps prepare for the discussion of alternatives, it also helps develop relationships and establish communications patterns, separating the people from the problem.
- Next, the parties discuss the information that needs to be gathered to facilitate discussions, and they arrange for this to be done in a cooperative way. The purpose of this step is to prepare for inventing options and developing objective criteria for the best solution.
- Identifying options comes next. Once there is a good understanding of the concerns or interests (these might be called issues, but we try to avoid this word to discourage parties from taking sides), options or alternatives can be identified. Here, it is made clear that the suggestion of a possible solution is

not binding on a party. In other words, it is not an offer, only an idea. Ideally this attitude encourages everyone to be open and to put all possibilities on the table.

- Next, the preferred options are chosen. If, after full analysis and discussion applying the agreed-upon criteria, the parties are able to find a solution that meets the needs of the parties, contract language is drafted and approved.
- If the parties are having difficulty finding a solution that meets all interests, outside parties can be called in to help achieve a voluntary resolution. This step could entail hiring an expert on a particular subject, such as on health plans, who might suggest solutions or who could provide information and aid in understanding alternatives. This also could involve retaining a facilitator or mediator.

Resolution of Impasse. If after 40 days of negotiation, unresolved issues remain, they must be submitted to a process that is called "advisory fact finding" but that amounts to nonbinding arbitration. The charter spells out the selection procedure and provides the authority and scope to be allowed the fact finder. An important requirement is that the fact finder must recommend the final offer of one of the parties. This requirement was written to encourage each party to be realistic in its final offer and to avoid the fact finder's coming up with a solution unacceptable to both parties. (In three years, this point never has been reached.)

Upon receipt of the fact finder's recommendations, the parties have 10 days for further negotiation of a resolution. If an impasse remains on any items, the city must advise the union of its accept/reject decision, then the union has five days to do likewise. Should unresolved issues still remain, the issues are submitted to a vote at the next election.

Preparing for Negotiations

After the vote on the charter, we had several months to prepare for the first contract negotiations. As some training was needed before starting negotiations, the firefighters' negotiating team was invited to participate with management in a three-day program conducted by a consultant skilled in principle-based methods. Everyone was given a copy of the book *Getting to Yes* before the training session.

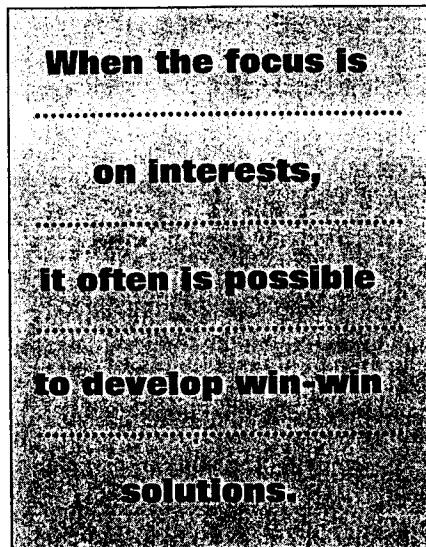
The three-day session consisted of learning the principles of interest-based negotiations and practicing with role-playing sessions. The training also focused on communication because effective communication would certainly be the key needed to break out of the positional bargaining habits most of us had developed. This focus was particularly helpful to the union team because its members had no experience in collective bargaining. As management personnel learned, "Power is a product of the interpersonal relationship, not of the individual" (Hocker & Wilmot 1991).

Results

Negotiations with firefighters have gone smoothly for three years now, and contracts have been negotiated within the required time frames. Outside assistance has not been called for; nor has referral to the voters.

The first contract established a labor/management committee that has helped improve internal communications and provided an opportunity for employee input into decision making, one of the stated policy objectives. Management has learned that allowing input does not require relinquishing authority or giving up management rights.

The process has enabled us to resolve such tough issues as compensation with relative ease. It has been agreed, for example, that firefighters should be "compensated fairly," defined as being paid at the same rates



paid for similar positions in the region. A methodology has been worked out for calculating the averages on which the pay rates are determined and on which the necessary data have been collected and calculations made. In the end, this process provided only one answer, and there was no need for either side to defend a position or make a compromise. There were no losers. Interestingly, this approach has all but eliminated the parity issue between police and fire, and different percentage increases on an annual basis often have occurred.

This methodology also helps the city council fend off the persistent complaints about public sector wage levels, which average higher than some sectors of our local economy. Attention is not given to such factors as cost-of-living changes as reflected by the CPI, although our results by virtue of the methodology tend to be close to the CPI.

A Worthwhile Process

Principle-based collective bargaining is a better way to negotiate. Among the primary benefits are these:

- The long-term relationship is enhanced by encouraging cooperation and collaboration between

management and firefighters.

- The focus is on common interests, rather than differences. The feeling is that "we did it together," not that one side won and the other lost.
- Employees feel empowered, which means they are likelier to share responsibility for resolving problems and achieving goals than to demand rights.
- The process has a structure with clear boundaries and steps for the resolution of an impasse (as in the final offer requirement) that motivate the parties to negotiate seriously from the beginning. I believe this is an advantage over binding arbitration, which lets someone else make the tough decisions. While the voters may make the final decision, the process is a public one that tends to make the parties more accountable. I doubt that we ever will have a vote.
- Solutions can be more satisfying than the compromises that typically result from positional bargaining. When everyone is busy defending positions, it is hard to find time to invent solutions. When the focus is on interests, it often is possible to develop win-win solutions.
- If managers can accept the idea that sharing power is a way of enhancing power, it is easier to put all the cards on the table. Also, the communication skills needed to make this process work can be learned.

Best of all, the concept of interest-based negotiation can be used in many types of dispute resolution in any organization. [21]

References

Fisher, Roger, and William Ury. *Getting to Yes: Negotiating Agreement Without Giving In*. Boston: Houghton Mifflin Company, 1981.

Hocker, Joyce L., and William W. Wilmot. *Interpersonal Conflict*, 3rd ed. Dubuque, Iowa: Wm. C. Brown, 1991.

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